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No. 787

In the

Supreme Court of the United States

OCTOBER TERM, 1967.

TEITEL FILM CORPORATION, a corporation, and CHARLES TEITEL,

Appellants,

vs.

JOHN F. CUSACK, NER LITTNER, MARY MUELLER, HENRY RAGO and MATTHEW SCHOENBAUM, Members of the Motion Picture Appeal Board of the City of Chicago,

Appellees.

Appeal from the Supreme Court of Illinois.

OBJECTIONS TO MOTION TO DISMISS OR AFFIRM

ELMER GERTZ
120 South LaSalle Street
Chicago, Illinois 60603
312—RA 6-6116

LEON N. MILLER
33 North Dearborn Street
Chicago, Illinois 60602
312—RA 6-2155
Attorneys for Appellants

The Scheffer Press, Inc.—ANdover 3-6850

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Now come appellants and object to appellees' motion to dismiss or affirm.

It is necessary to correct glaring errors of fact in appellees' brief. It is distressing to learn here, as below, that the Corporation Counsel of a great city finds it necessary to misstate facts in a fashion that one can only describe as cynical.

It is charged that appellants—not appellees, the agencies or the courts—are responsible for the great delays and resulting unconstitutional prior restraints in these proceedings. Of course, the basic answer, as made by us in our Jurisdictional Statement, is that an open-end censorship system, as here, with no built-in safeguards to eliminate long delays, however caused, is responsible for the unconstitutional results proscribed by this court in *Freedman* v. *Maryland*, 380 U.S. 51, 85 S. Ct. 734 (1965), and other guideline cases, such as *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 83 S. Ct. 631 (1963), and *Kingsley Books, Inc.* v. *Brown*, 354 U.S. 436, 77 S. Ct. 1325 (1957.)

Appellees even charge us with responsibility for the delays before the Supreme Court of Illinois, because, allegedly, we did not ask that court to expedite the proceedings and to place our case at the top of the calendar —*this in the face of the unquestioned fact that we repeatedly urged the court not to permit appellees to delay the proceedings by unconscionable extensions of time in filing their briefs.* (See pages 7-8 and 11-13 of Jurisdictional Statement). By letter, telegram and formal objections we called the court's attention, to no avail, to the violation of the *Freedman* guildelines and due process occasioned by the granting of these delays.

This is a touchstone for learning the truth with respect to the delays in the trial court. Appellees say that a certain rule of the Circuit Court of Cook County, Illinois, set forth in their Appendix "A," assured us of a hearing in five days. We effectively anticipated this charge in our Jurisdictional Statement when we said, at page 7:

> "The Circuit Court of Cook County has a rule purportedly requiring a hearing in movie picture censorship cases within five days of answer. This rule

does not apply to the instant situation in which there were motions to strike the complaints. It does not require the chancellor to rule upon the matter within any definite period, long or short. Both counsel for plaintiffs and the court stated that the rule was inapplicable and ignored it completely."

We want to dispose of the matter definitively by quoting from the record of the proceedings before the trial court where both appellees' counsel and Judge Harrington agreed that general order 3-3 of the Circuit Court of Cook County was inapplicable and that, in any event, it would not be followed (March 24, 1966 Report of Proceedings page 3, Supplemental Record, p. 37 (Item 19)).

"Mr. Aspen: As far as the Court is concerned, it is my understand (sic) that Judge Boyle in General Rule 3-3, *which has nothing to do with the ordinance* has said there will be a hearing within five days of either the filing of an answer—

The Court: I am going to have it changed because *we just cannot set everything aside to give priority to this kind of litigation.*" (Emphasis supplied)

Because we asked for hearings on our motions and the court set such hearings at distant dates, appellees say that we are responsible for the delays. The fact, we repeat, is that Judge Harrington, hostile to what he regarded as undesirable motion pictures and unsympathetic to the primacy of the First Amendment, placed every possible obstacle in our way. He did this in spite of the fact that we continually called to his attention the language in *Freedman* which is quoted on page 3 of Appellees motion to dismiss or affirm: "Therefore, the procedure must also *assure a prompt final judicial decision*, to minimize the deterrent effect of an interim and possibly erroneous denial of a license." (emphasis supplied).

On the administrative level only, there was a delay possibly attributable to the exhibitors, although, in truth, it was due to defects in the Chicago motion pictures censorship ordinance. The exhibitors delayed in asking for a review by the Motion Pictures Appeal Board because of unfamiliarity with the bi-level approach of the Chicago ordinance.

In any event, appellees expressly waived any delay at the administrative level occasioned by the fact that appellants did not comply with the seven-day schedule in the ordinance for asking a review by the Motion Pictures Appeal Board. The Corporation Counsel proclaimed this as evidence of fairness on his part when arguing another matter in the United States District Court before Judge Bernard M. Decker. (See pp. 48 and 59 ff. of the proceedings in that case (67 C 322, N.D. Ill.))

Perhaps we have not heretofore stressed sufficiently the constitutional impediments in this bi-level administrative system. The Chicago ordinance makes it possible to restrain the showing of motion pictures *without a judicial determination of the alleged obscenity of the films.* It places the burden upon the exhibitor, and not the governmental body, to take the necessary steps to secure such review. There is no obligation upon the Board or other governmental body to go to court in the absence of a prior request for a review by the exhibitor. Thus, not only the exhibitor but the public, may be deprived of its First Amendment rights.

The exhibition of a film may be suppressed for a period of up to 63 days before a judicial proceeding is even begun. This is censorship at its worst.

The showing of a film may be suppressed forever if the exhibitor—not the agency, as required by *Freedman*—does not take certain technical steps. Thus unconstitutionality is compounded.

Nothing set forth by appellees serves to contradict the language with which we began our statement of the case on page 3 of the Jurisdictional Statement:

> ". . . 58 or 63 days of delay (depending upon classification) is built into the Chicago Motion Pictures Censorship Ordinance (the Illinois Supreme Court mistakenly says it is only 50 days); unlimited delay is built into the trial court level (in these cases it took 6 months and might have taken longer); and unlimited delay is built into the appellate level (in these cases it took 12 months and might have taken longer). In all, it took 20 months for a final decision upon the constitutional status of these films, and there is nothing in the ordinance, state statutes or court rules that could have prevented longer delays—prior restraints beyond any permissible constitutional limits."

These computations of time exclude any delay occasioned by appellant's failure to ask for a review by the Motion Pictures Appeals Board. There is nothing reasonable about such a procedure in which long delays are built in and unavoidable.

It is notable that appellees do not refer to our objections with respect to the overbroad and unconstitutional scope of censorship under the Chicago system by very definition. We refer the court again to pages 4-5 of our Jurisdictional Statement, unanswered by appellees. The existence in this ordinance of these impermissible rea-

sons for censorship was compounded by the trial judge's use of an impermissible definition of obscenity in ruling upon these films, as pointed out on page 14 of our Jurisdictional Statement.

For the foregoing reasons and others set forth in our Jurisdictional Statement it is clear that the questions presented by this case are substantial, and appellants request that the motion of appellees to dismiss or affirm be denied, and that this Court note probable jurisdiction herein.

Respectfully submitted,

ELMER GERTZ
LEON N. MILLER
Attorneys for Appellants